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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/603,873 | 06/25/2003 | David Peter Dennison | 8119-90049 | 3017 |
| 24628 | 7590 | 06/24/2004 | EXAMINER | |
| WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606 | | | | HARTMANN, GARY S |
| | | ART UNIT | | PAPER NUMBER |
| | | 3671 | | |

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|-------------------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/603,873 | DENNISON, DAVID PETER <i>CWB</i> |
| | Examiner | Art Unit |
| | Gary Hartmann | 3671 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 June 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/22/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the circular profile (claim 17) must be shown or the feature canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1 and 19 are objected to because of the following informalities: regarding claim 1, the term "some" (line 6) must be a positive recitation of a specific term in order to clearly state which part is being referred to. Regarding claim 19, the term "1,2" should be --1.2--, in accordance with U.S. practice. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of a top face (claim 1, line 3 and claim 14, line 2) and closed cell (claim 7, line 2) is inconsistent with the structure, since the body is clearly open at the top. These terms have not been further treated on their merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6-9, 11, 13-17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Montgomery (U.S. Patent 23,038).

Montgomery discloses a stabilizing body including a substantially rigid, planar body defining a multi-cell configuration (Figure 1, for example). The cells are defined by walls (not specifically labeled, see Figures 1-4, for example) extending from a top (A) to a bottom (B). Formations (C) meet the recitation of an anchoring formation, since the purpose is to improve stability of the moldable material within the body.

The body is an open cell (Figure 2, for example).

There are projecting formations (B) on the base wall.

Regarding claim 11, the cell heights appear to meet claim recitations.

The side walls taper from the top towards the bottom (Figure 1, for example).

The body is a rectangular.

Regarding claim 21, this is a process claim which does not further limit the apparatus claim, since the apparatus could have been used in the manner claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 12, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery, as applied above.

Regarding claim 10, Montgomery teaches that the shape of the base is configured to securely retain material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have configured the base of Montgomery to include lateral ridges in order to better secure the material in the longitudinal direction. This configuration would have met the recitation of "egg-crate configuration."

Regarding claim 12, it is well known in roadway stabilizing bodies to include apertures for draining. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided these in the body of Montgomery in order to increase the lifespan of the pavement.

Regarding claims 19 and 20, size is not a patentably distinguishing feature in this instance. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the sized claimed in order to meet particular design criteria.

Claims 3-5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery as applied above, and further in view of Tracy et al. (U.S. Patent 3,238,682).

Tracy et al. teach that projecting formations (17, 18, 19) on side walls of stabilizing bodies serve to lock the moldable material to the body. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used projecting formations on the side walls of Montgomery for the purpose taught by Tracy et al.

Montgomery does not teach synthetic plastics material; however, Tracy et al. teaches using this material as the material of construction of a stabilizing body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the material of Tracy et al. as the material of Montgomery in order to obtain an inexpensive, corrosion resistant body.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Gary Hartmann
Primary Examiner
Art Unit 3671**

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